DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0428
Motor Carrier Fuel Tax
For The Tax Years 2004-2006

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Motor Carrier Fuel Tax - Calculation

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-9; IC 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-4(a).

The Taxpayer protests the Department's calculation of motor fuel tax pursuant to the International Fuel Tax Agreement.

II. Tax Administration - Penalty

Authority: IC § 6-6-4.1-23; 45 IAC 15-11-2(b).

The Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation engaged in trucking with one truck and a driver. After an audit, the Indiana Department of Revenue (Department) assessed additional motor fuel taxes under the International Fuel Tax Agreement (IFTA), penalty, and interest against the Taxpayer for the tax years 2004-2006. The Taxpayer protested the assessments and a hearing was held. This Letter of Findings results.

I. Motor Carrier Fuel Tax Agreement - Imposition

DISCUSSION

The Taxpayer protests the Department's imposition of motor carrier fuel taxes pursuant to IFTA.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor fuel taxes. The agreement's goal is to

simplify the tax, licensing, and reporting requirements of interstate motor carriers such as the taxpayer. The agreement itself is not a statute, but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-8.1-3-14.

The Taxpayer was a trucking concern that operated in Indiana. As such, it operated on Indiana highways and consumed motor fuel. Therefore, the Taxpayer was subject to IFTA taxes. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id*. Taxpayers have the duty to maintain books and records and present those to the Department for review upon the Department's request. IC 6-6-4.1-20. IC § 6-8.1-5-4(a).

The Taxpayer was unable to produce any documentation demonstrating that it had paid the proper amount of tax on the motor fuel it used in its operations. Due to the lack of documentation, the Department assessed tax based on the best information available. The Taxpayer's jurisdictional miles were estimated based upon the records available. The Department estimated that the Taxpayer's truck used fuel at the rate of four miles per gallon. By dividing the estimated mileage by four (the number of miles the truck went per gallon), the Department estimated the gallons of gasoline used by the Taxpayer.

The Taxpayer protested the use of four miles per gallon to determine the truck's gasoline usage. The Taxpayer produced documentation indicating that other truck companies for which he sometimes drove gave him credit for a higher mileage per gallon. IC § 6-6-4.1-9 requires the Department to use four miles per gallon in estimating usage when the Taxpayer's records are inadequate to determine the actual number of miles per gallon of motor fuel used by a particular truck. Therefore, the Department properly used four miles per gallon to determine the Taxpayer's gasoline usage.

The Taxpayer also protested based upon Notices of Proposed Assessment dated December 13, 2004, and December 13, 2005. The Taxpayer paid these assessments. These notices assessed additional motor fuel taxes for the third quarter of 2004 and the third quarter of 2005. The Taxpayer alleged that his payment of these assessments satisfied his obligations to the state for those periods. The Taxpayer erred in this conclusion. The 2004 and 2005 notices resulted from desk audits of then available information. The current assessment results from a full audit of the Taxpayer's records. In this audit, the Department gave the Taxpayer full credit for the taxes paid pursuant to the notices issued on December 13, 2004 and December 13, 2005.

FINDING

The Taxpayer's protest is respectfully denied.

II. **Tax Administration**- Ten Percent Negligence Penalty

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-6-4.1-23. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Due to a lack of reasonable care and failure to follow the instructions of the Department, the Taxpayer did not pay taxes it owed to Indiana. This constitutes negligence. The Department properly imposed the penalty.

FINDING

The Taxpayer's protest is respectfully denied.

KMA/LS/DK- May 30, 2007